

U.S. v. Korte

(9th Cir. 2019) __ F.3d __ [2019 WL 1216207]

Issues

Did officers violate the Fourth Amendment by conducting a warrantless search of the defendant's car and by installing a GPS tracking device?

Facts

In August of 2016, Kyle Korte was paroled from state prison after serving time for bank robbery. Within weeks, he resumed his bank robbery activities by robbing banks in Playa Vista, Torrance, and Seal Beach. Korte quickly became a suspect because of similarities between the new robberies and the one that resulted in his prison sentence. Consequently, an LASD deputy reviewed the banks' surveillance recordings and noticed that the robber did resemble Korte. In addition, deputies checked the surveillance recordings of street traffic in the areas and spotted Korte's car shortly before or after one of the robberies.

Next, investigators placed a GPS tracking device on Korte's car and, at times, also conducted physical surveillance. During such physical surveillance, they followed Korte as he left his home, drove to a bank, parked nearby, opened the trunk of the car, and placed something inside. Having already obtained a warrant for Korte's arrest, they pulled up and arrested him. Inside the trunk of his car, they found the toy gun that had been used in some of the robberies.

Korte was charged with three counts of bank robbery and one count of attempted bank robbery. He filed a motion to suppress the data that the deputies has obtained via the GPS device, and also the toy gun they found in the trunk. The motion was denied, the case went to trial, and Korte was convicted.

Discussion

On appeal, Korte he argued that (1) the search of the trunk of his car was unlawful because the deputies did not have a warrant, and (2) the warrantless installation of a GPS monitor on his car constituted a illegal search because electronic surveillance is so intrusive. The court rejected both arguments.

SEARCH OF THE TRUNK: As noted, Korte was on parole when his car was searched. And in California, all parolees are subject to warrantless searches of property under their control. Thus, the court ruled the search was lawful because Korte was the driver of the car and therefore had control over the trunk. In addition, investigators saw him open the trunk and place something (probably his toy gun) inside.

INSTALLATION OF GPS TRACKER: The Supreme Court has ruled that the installation of a GPS tracker on a vehicle constitutes a "search."¹ Although it is unsettled whether a warrant is required to conduct such a search, the court in *Korte* said "we are hard-put to say that the warrantless placement of a GPS tracker on a parolee's car is impermissible." After all, "[i]f an officer can conduct a warrantless search of a parolee's cell phone—an

¹ See *US v. Jones* (2012) 565 U.S. 400.

object that is the sum of an individual's private life—placing a GPS device on a parolee's car cannot logically demand more constitutional protection."² POV

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² **NOTE:** There was one other issue. The investigators also obtained a court order that authorized the disclosure of cell site location information (CSLI), and this information showed that Korte was near three of the banks when they were robbed. At that time, CSLI could be obtained by means of a simple court order based on an officer's declaration that the data was relevant to a criminal investigation. While this case was pending, however, the Supreme Court ruled that a search warrant based on probable cause was required. The court in *Korte*, however, ruled that suppression of the CSLI information was unwarranted under the good faith rule.